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Nos. 82-1005, 82-1247, 82-1591

IN THE

Supreme Court of The United States

October Term, 1983

CHEVRON U.S.A., INC.,
Petitioner,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.,
Respondents;

AMERICAN IRON AND STEEL INSTITUTE, et al.,
Petitioners,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et. al.,
Respondents;

ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY
Petitioner,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE FOR UNITED STEELWORKERS OF AMERICA AFL-CIO-CLC

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MOTION TO FILE BRIEF AMICUS CURIAE FOR UNITED STEELWORKERS OF AMERICA AFL-CIO-CLC

The United Steelworkers of America, AFL-CIO-CLC (Union) requests that this Court grant this Motion to file a brief *amicus curiae* in support of respondent Natural Resources Defense Council (NRDC) for the following reasons.

1. Statement of Interest

The Union is a labor organization which represents close to one million workers in the United States and Canada. Approximately 250,000 of our members are employees of corporations that belong to petitioner American Iron and Steel Institute. Most of these members and their families, together with substantial numbers of other Union members and their families, live in areas of the country where the air quality violates one or more of the national ambient air quality standards in part because of air pollution from iron-and steelmaking operations.

Moreover, the Union was a leading force in the efforts to enact the Clean Air Act (the Act) (42 U.S.C. §§ 7401 et seq.) and has continued to be active in the efforts to obtain compliance with the requirements of the Act by a number of industries, including the steel industry. To that end, the Union, in conjunction with the Environmental Protection Agency (EPA) and various environmental groups such as respondent NRDC played a primary role in the development and passage of the Steel Industry Compliance Extension Act of 1981 (Pub. L.No. 97-23, 95 Stat. 139 (1981)) (the Extension Act) which amended the Clean Air Act to extend compliance deadlines in return for modernization of operations in the steel industry. Our support of such an extension was based on the premise that modernization of the steel industry would benefit not only the long-term employment prospects of our members by providing a more competitive industry, but also benefit their health and that of their families in the surrounding communities since the new, modern projects would meet existing air pollution control requirements.

2. Issue to be Presented

The purpose of our brief *amicus curiae* is to focus particular attention on the conflict between the plantwide definition of source now espoused by EPA, and the Extension Act amendments extending the compliance deadlines for the steel industry. Those amendments were premised on a definition of source for nonattainment areas that included as "sources" units of operation or production built within existing plants as well as such units built at new sites. This issue will not be adequately addressed by petitioners EPA and the American Iron and Steel Institute since they now support the plantwide definition of source at issue here. Respondent NRDC, while a party to the negotiations surrounding the Extension Act amendments, is more concerned with the relationship of the changed definition of "source" to the Clean Air Act in general rather than to the specific development of the Extension Act. Moreover, NRDC lacks the unique perspective of the Union whereby the Union sought to provide immediate relief to the steel industry so that the capital funds made available could be used for modernization with the assurance that the new projects would improve air quality in the nonattainment areas where many of the Union's members and their families live.

3. Statement of Consent or Objection

On September 19, 1983, counsel for the Union requested from counsel of record for petitioners and respondents, their written consent or objection to the filing of the Union's brief *amicus curiae*. Consent was obtained from the Federal government parties and NRDC. Petitioner Chevron objected to the filing unless a draft brief was submitted in advance. Since no brief was so submitted, Chevron's response was considered an ob-

jection to the filing of this brief. Responses were not received from any other parties.

WHEREFORE, for the reasons set forth above, the Union requests that this Motion to file a brief *amicus curiae* be granted.

Respectfully submitted,

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Dated: October 19, 1983

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	i
STATEMENT OF INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	9

TABLE OF AUTHORITIES

STATUTES

CLEAN AIR ACT (AS AMENDED 1977)	
42 U.S.C. §§ 7401 ET SEQ.	2
42 U.S.C. § 7503	5
STEEL INDUSTRY COMPLIANCE EXTENSION ACT	
PUB. L. No. 97-23, 95 STAT 139 (1981)	passim
42 U.S.C. § 7413(e)(1)(C)	7
42 U.S.C. § 7413(e) (2)	7

LEGISLATIVE MATERIALS

S. Rep. No. 97-133, 97th Cong., 1st Sess. (1981)	4
H. Rep. No. 97-121, 97th Cong., 1st Sess. (1981)	4,7,8
Hearings Before the Senate Committee on Environment and Public Works, 96th Cong., 2d Sess. (1980)	6
Hearings on S. 63 Before the Senate Committee on Environment and Public Works, 97th Cong., 1st Sess. (1981)	6
Hearings on H.R. 1817, 2024, 2219, 2055, and 2286 Before the Subcommittee on Health and Environment of the House Committee on Energy and Commerce, 97th Cong., 1st Sess. (1981)	5,6
127 Cong. Rec. S6986 (daily ed. June 25, 1981)	4
127 Cong. Rec. H2446 (daily ed. May 28, 1981)	2
127 Cong. Rec. H2447 (daily ed. May 28, 1981)	4
127 Cong. Rec. H2448 (daily ed. May 28, 1981)	8
127 Cong. Rec. H2449 (daily ed. May 28, 1981)	4

MISCELLANEOUS

New York Times, March 4, 1981	4
BNA Environment Reporter, May 8, 1981	4
BNA Environment Reporter, July 3, 1981	4

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BRIEF AMICUS CURIAE FOR UNITED STEELWORKERS OF AMERICA AFL-CIO-CLC

STATEMENT OF INTEREST OF AMICUS CURIAE

The United Steelworkers of America, AFL-CIO-CLC (Union) is a labor organization which represents close to one million workers in the United States and Canada. Approximately 250,000 of our members are employees of corporations that belong to petitioner American Iron and

Steel Institute. Most of these members and their families, together with substantial numbers of other Union members and their families, live in areas of the country where the air quality violates one or more of the national ambient air quality standards in part because of air pollution from iron-and steel-making operations.

Moreover, the Union was a leading force in the efforts to enact the Clean Air Act (the Act) (42 U.S.C. §§ 7401 et seq.) and has continued to be active in the efforts to obtain compliance with the requirements of the Act by a number of industries, including the steel industry. To that end, the Union, in conjunction with the Environmental Protection Agency (EPA) and various environmental groups such as respondent, Natural Resources Defense Council (NRDC), played a primary role in the development and passage of the Steel Industry Compliance Extension Act of 1981 (Pub. L.No. 97-23, 95 Stat. 139 (1981)) (the Extension Act) which amended the Clean Air Act to extend compliance deadlines in return for modernization of operations in the steel industry. Our support of such an extension was based on the premise that modernization of the steel industry would benefit not only the long-term employment prospects of our members by providing a more competitive industry, but also benefit their health and that of their families in the surrounding communities since the new, modern projects would meet existing air pollution control requirements.[1]

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1. As Congressman Doug Walgren stated:

> Under this legislation, the same environmental goals will be met as under the present law but the investment required will be able to be coordinated with new production facilities. Therefore, there is no loss whatsoever from an environmental viewpoint.

127 Cong. Rec. H2446 (daily ed. May 28, 1981).

The purpose of this brief is to focus particular attention on the conflict between the plantwide definiton of source now espoused by EPA, and the Extension Act amendments extending the compliance deadlines for the steel industry. Those amendments were premised on a definition of source for nonattainment areas that included as "sources" units of operation or production built within existing plants as well as such units built at new sites.

SUMMARY OF ARGUMENT

The development and passage of the Extension Act, which amended the Clean Air Act to defer certain compliance deadlines for the steel industry in return for a commitment to modernization was the result of negotiations by the industry, the Union, EPA and environmental groups such as respondent NRDC. A key principle underlying those negotiations was that the modernization projects built in nonattainment areas would meet the requirements for new source review. Moreover, the types of sources that were at issue and were identified by Congress were production units within a steel plant, e.g., coke ovens, blast furnaces and continuous casters, not entire plants. EPA's subsequent regulations have undermined that consensus by changing the definition of source to apply only to entire industrial plants.

ARGUMENT

The genesis of the Extension Act, its statutory language, and legislative history make clear that the pro-

duction unit definition of source, as opposed to the plant-wide definition, was no accident nor was it incidental to the passage of the Extension Act.[2] "The bill reflects an historic agreement hammered out last September between representatives of the steel companies, the steelworkers union, ... the environmental groups, and the Environmental Protection Agency." 127 Cong. Rec. H2449 (daily ed. May 28, 1981) (remarks of Congressman John Dingell).

This agreement was especially unusual in that it was the culmination of an extended bargaining process among four very disparate groups.[3] Through this process, these four participants achieved a consensus that resulted in the passage of the Extension Act.[4] The essence of this agreement was that the steel industry,

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2. That passage reflected a "carefully crafted agreement reached by industry, labor [the Union], environmental groups and EPA." 127 Cong. Rec. H2447 (daily ed. May 28, 1981) (remarks of Congressman Doug Walgren), to "achieve healthy air through a flexible system of modernization supervised by the judicial system." S.Rep. No. 97-133, 97th Cong., 1st Sess. 3 (1981).

3. The Extension Act was based on the recommendations of the Steel Tripartite Committee as one part of a program to address the fundamental problems of the steel industry. H.R. Rep. No. 97-121, 97th Cong., 1st Sess. 2 (1981), reprinted in 1981 U.S. Code Cong. & Admin. News 57. The members of the Committee, in conjunction with representatives from environmental groups, developed the legislative proposal that formed the basis for the Extension Act. 127 Cong. Record S6986 (daily ed. June 25, 1981) (remarks by Senator Randolph).

4. BNA Environment Reporter May 8, 1981, Vol. 12, No. 2 at 60 and July 3, 1981, Vol. 12, No. 10 at 307. "Unusual Alliance Seeking to Postpone Pollution Curbs on Steel Industry," *New York Times*, March 4, 1981, at A-30, Col. 3.

which contended it had a short-term capital shortage, would be allowed a three-year extension of the deadline for compliance with some pollution control requirements on the condition that the money saved by this deferred compliance was invested in the modernization of steelmaking operations, with the modernization being carried out under the then existing conditions for new source review. One of the key factors in such review is the application of the lowest achievable emission rate technology (LAER). The LAER requirement is one of the specific conditions new and modified "sources" must meet in order to obtain a permit under §173 of the Clean Air Act (42 U.S.C. § 7503). Since the parties to the bargaining process and Congress recognized the applicability of LAER to the modernized production units that were to result from the extension, this Court should reject EPA's belated attempt to renege on one of the fundamental premises that precipitated the cooperative agreement of these disparate groups.

In issuing a statement regarding his new steel industry program, President Carter emphasized compliance with environmental laws:

> But modernization is equally important to environmental objectives, since modern facilities are inherently much cleaner, and *all parties (including the industry) have agreed they will use the most modern technology available.*

Hearings on H.R. 1817, 2024, 2219, 2055, and 2286 Before the Subcommittee on Health and Environment of the House Committee on Energy and Commerce, 97th Cong., 1st Sess. 130 (1981). (emphasis added).

John J. Sheehan, Legislative Director, representing the Union at the bargaining table, reiterated the understanding that modern technology meant LAER:

> Furthermore, the amendment fosters the continued imposition of reasonably available control technology for existing sources and emission limitations requirements of applicable implementation plans, *including technology to achieve lowest emission rates for new facilities.*

Id. at 82 (emphasis added).[5]

Finally, in testifying before the Senate Committee, Frances Dubrowski, a senior staff attorney at the Natural Resources Defense Council (NRDC) stated:

> Fourth, the company would have to agree to meet all applicable clean air requirements by the new compliance deadline. *This would include attaining the lowest achievable emission rate (LAER) on the new facilities and installing reasonably available control technology (RACT) on existing facilities.*

Hearings on S.63 Before the Senate Committee on Environment and Public Works, 97th Cong., 1st Sess. 92 (1981) (emphasis added). See also Hearing on H.R. 1817, supra at p. 86.[6]

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5. As Union President Lloyd McBride testified when the Steel Tripartite Committee made its report to Congress in 1980, the application of LAER to the new facilities was viewed as an important prerequisite for growth in steel-making communities. Hearing Before the Senate Committee on Environment and Public Works, 96th Cong., 2d Sess. 51 (1980).

6. Although the steel industry issued no direct statement regarding LAER, they voiced no opposition to the above-quoted statements. This silence is important since as part of the agreement under which the parties sought the compliance extension for the steel industry, the industry, through the chief executive officers of the major steel companies, gave assurances "that a stretchout of the compliance deadlines was all the relief the industry would either need or seek from the health protective requirements of the Clean Air Act." *Id.* at 85, 91, 96.

Congress demonstrated full awareness that LAER would apply to production units as part of new source review and not to whole plants. Specifically, Congress stated:

> [The] program to modernize facilities will also continue to include the application of lowest achievable emission rate technology (LAER) on the modernized facilities. LAER is required for any new, modified, or reconstructed major facility in a nonattainment area.

H.R. Rep. No. 97-121, 97th Cong., 1st Sess. 12 (1981), reprinted in 1981 U.S. Code Cong. Admin. News 63.

Both the statutory language and the legislative history of the Extension Act clearly reflect this Congressional intent to treat as stationary sources major units of production within iron-and steel-making operations not just entire plants. For example, in setting out the conditions necessary to obtain an extension, Congress required that there must be a compliance schedule "for each stationary source at all such person's iron-and steel-producing operations . . . " 42 U.S.C. § 7413(e) (1) (C). Iron-and steel-producing operations were defined to include "production facilities for iron and steel, as well as associated processing, coke making and sintering facilities." (42 U.S.C. § 7413(e) (2)).[7] Both of these statutory

7. While the "sources" referred to in this section of the Extension Act are existing sources which do not need to meet the compliance requirements for new sources, they are located within steel plants in nonattainment areas and therefore reveal the Congressional understanding that the term "source" includes units of production within steel plants rather than the plant as a whole.

provisions support the position that Congress intended the term "source" to mean something other than an entire iron-and steel-making plant, namely the various production units within that plant.

Moreover, the legislative history of the Extension Act clearly reflects Congressional intent to treat as stationary sources major units of production, not entire plants. The House Report of the Extension Act states that the House proposal was intended to "encourage additional capital investments in steelmaking operations." H.R. Rep. No. 97-121, *supra* at p. 63. By "steelmaking operations" Congress envisioned the various production units comprising the plant. The Report specifies examples of projects that could result from such investments:

> It is anticipated that the industry will use the opportunity to modernize the American steel industry by building modern *continuous casters*, converting *open hearth shops* to *basic oxygen furnace operations* or undertaking similar projects to improve the competitive posture of the industry.

Id. (emphasis added.) It is evident from this statement that Congress relied on a unit definition of source, not a plant-wide definition.[8]

According to the above-quoted House Committee Report, continuous casters, basic oxygen furnaces, and coke ovens (which are examples of the intended modernization projects) are subject to LAER. Only new and modified "sources" are subject to LAER. Therefore, continu-

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8. Further, in expressing his support for the Extension Act, Congressman Adam Benjamin cited the construction of a new continuous caster and the modernization or replacement of coke ovens as potential modifications provided for by this legislation. 127 Cong. Rec. H2448 (daily ed. May 28, 1981).

ous casters, basic oxygen furnaces, coke ovens, and other like units are "sources." There is no way to reconcile EPA's adoption of a plant-wide definition of "source," which exempts such units from LAER and other permit requirements, with the genesis of the Extension Act, its statutory language or its legislative history.

CONCLUSION

The development of the 1981 Steel Industry Compliance Extension Act undeniably reveals that Congress understood the law to be, and to remain, that a "source" is a unit within a plant (such as a basic oxygen furnace), not the plant itself. EPA's subsequent adoption of the plant-wide definition of source is totally inconsistent with this understanding and thus violates a key premise relied on by the Union in its support of the passage of the Extension Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 1983, I served three (3) copies of the enclosed Motion for Leave to File Brief *amicus curiae* and Brief *amicus curiae* by first class mail, postage prepaid, to the following counsel:

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